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SMITH'S FOOD & DRUG CENTERS, INC.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MIGUEL ANGEL ARIZMENDI  
MARTINEZ, an individual,

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.,  
a foreign corporation; DOE & ROE  
MAINTENANCE EMPLOYEES; DOE &  
ROE MAINTENANCE COMPANIES; DOE  
& ROE EMPLOYEES; DOE & ROE  
EMPLOYERS; DOE OWNERS I-V; ROE  
OWNERS I-V; ROE EMPLOYERS I-V;  
DOES I-V; and ROE COMPANIES I-V,

Defendants.

Case No.

**NOTICE OF REMOVAL**

Defendant, SMITH'S FOOD & DRUG CENTERS, INC. ("SMITH'S") hereby gives notice of its removal of Case No. A-20-827093-C from the Eighth Judicial District Court, Clark County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C. §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

**I.**  
**NOTICE OF REMOVAL IS TIMELY**

1. On December 29, 2020, Plaintiff MIGUEL ANGEL ARIZMENDI MARTINEZ, filed this lawsuit against SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the Complaint and process, is attached hereto as Exhibit "A".

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2. SMITH'S was served with process on or about January 4, 2021. SMITH'S hereby reserves any and all rights and defenses to Plaintiff's Complaint.

3. The prayer for relief in the Complaint filed and served on SMITH'S sought damages as follows:

1. General damages for Plaintiff in an amount in excess of \$15,000.00;
2. Special damages for Plaintiff' medical and miscellaneous expenses as of this date, plus future medical expenses, and the miscellaneous expenses incidental thereto in a previously unascertainable amount in excess of \$15,000.00; (Compl. at 7).

4. Defense counsel learned that the value of this case was sufficient for Federal jurisdiction on May 26, 2021. On that date, Plaintiff served his Initial Early Case Conference Disclosures. A copy of said disclosure is attached hereto as Exhibit "B". Therein, Plaintiff provided a list of medical expenses the total amount of which is \$63,366.84. Plaintiff also states that his general damages are in excess of \$15,000. Thus, the total damages alleged in Plaintiff's disclosures is \$78,366.84 – an amount in excess of the jurisdictional minimum for diversity.

Upon receiving Plaintiff's disclosure statement, Defense counsel learned that the "amount in controversy" exceeded the jurisdictional minimum for diversity jurisdiction.

5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

6. The following pleadings have been entered and/or filed in State Court:

- a. Plaintiff's Complaint filed December 29, 2020;
- b. Affidavit of Service of Summons and Complaint filed January 11, 2021
- c. SMITH'S Answer to Plaintiff's Complaint filed January 25, 2021;
- d. Plaintiff's Request for Exemption from Arbitration was served on February 12, 2021;

e. Commissioner's Decision on Request for Exemption was served on March 3, 2021; and

f. SMITH'S Demand for Jury Trial filed May 14, 2021.

7. Other than the pleadings discussed above, no further proceedings have taken place in District Court, Clark County, Nevada as of the filing of this notice of removal.

## II.

### **DIVERSITY JURISDICTION EXISTS**

8. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

#### **A. The Amount in Controversy Requirement is Satisfied.**

9. Plaintiff's Initial Early Case Conference Disclosures provided a list of medical expenses the total amount of which is \$63,366.84. Plaintiff also states that his general damages are in excess of \$15,000.

#### **B. The Parties Are Diverse.**

10. The diversity of citizenship requirement is satisfied. SMITH'S is informed and believes that Plaintiff was at the time of his Complaint a citizen and resident of the State of Nevada. (*See* Compl. ¶3) .

11. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio Corporation with its principal place of business in the State of Utah.

## III.

### **REMOVAL TO THIS JURISDICTION IS PROPER**

12. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state court action to this Court is appropriate.

13. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and division embracing the place where the state action is pending 28 U.S.C. §108.

14. SMITH'S reserves the right to amend or supplement this Notice of Removal.

